(1)

Supreme Court, U.S.
FILED

96 639 SEP 18 1996

OFFICE OF THE CLERK

NO._____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

DAVID KISSI, Petitioner

v.

GREAT AMERICAN INSURANCE COMPANIES,
Respondent

PETITION FOR WRIT OF CERTIORARI

TO THE MARYLAND COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

This case is related to Legg Mason now pending before this same court.

DAVID KISSI, Pro Se
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BELTSVILLE, MD 20705
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31 pp

QUESTION PRESENTED

Whether the Petitioner's 14th Amendment rights were abridged when Maryland arbitrarily rejected his Brief as defective without a hearing or setting a benchmark criteria to compare the said defective Brief with.

PARTIES TO THE PROCEEDING:

PETITIONER:

DAVID KISSI

RESPONDENT:

GREAT AMERICAN INSURANCE
COMPANIES

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NO._____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

DAVID KISSI, Petitioner

v.

GREAT AMERICAN INSURANCE COMPANIES,
Respondent

PETITION FOR WRIT OF CERTIORARI
TO THE MARYLAND COURT OF APPEALS

Petitioner, David Kissi, a pro se, submits this Writ of Certiorari to have reviewed Maryland Appellate Court's rejection of his Brief(s) for alleged defects. Petitioner prays that this submission may be jointly considered with his other petition re: Legg Mason, currently pending before this Court on the same issue. If this is acceptable,

Petitioner requests waiver of second filing fee.

OPINIONS BELOW

Maryland Court of Appeals denial of Petitioner's request for Writ of Certiorari appears in Appendix A. In Appendix B is Maryland Court of Special Appeals' initial dismissal of Petitioner's Brief(s) dated 1/26/96 and its Mandate issued on 3/26/96 is in Appendix C. Appendix D shows the Special Appeals Court denial of Motion for Reconsideration dated 2/27/96. The initial judgment of Montgomery County Circuit Court appears in Appendix E and its order denying a request for a new trial dated 6/8/95 appears as Appendix F.

JURISDICTION

Petitioner has exhausted all his appeals in Maryland. On 7/24/96, Maryland Appeals Court dismissed

Petitioner's request for a Writ to review the Special Appeals Court's dismissal of his Brief because it allegedly didn't comply with Maryland Rule 8-602(a)(8) (Appendix G). Now, this Court may have jurisdiction over this case pursuant to 28 USC 2403(a) re: 14th Amendment issues raised here. Further, Petitioner requests that this Court review jointly his other petition for Writ of Certiorari re: Legg Mason, which is currently pending before this Court.

Petitioner also believes that this Court's review is warranted since Maryland's opinion is in conflict with an opinion of Arkansas Supreme Court's review over an allegedly defective brief that Arkansas refused to dismiss - Hill v. State of Arkansas, (Appendix K).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment 14 to the U.S. Constitution is set forth in Appendix J.

STATEMENT OF THE CASE

On or about 5/3/96 (Appendix E), the Circuit Court of Montgomery County, Maryland dismissed Petitioner's claim for reimbursement from Respondent, Great American his insurer. The Petitioner then timely appealed on the basis of prejudicial error. But the Maryland Court of Special Appeals dismissed the Appeal claiming the Petitioner's Brief was trash (Appendix B). And the Petitioner's Writ of Certiorari to Maryland Court of Appeals was denied on 7/24/96 (Appendix A).

ARGUMENT: WHY A GRANT OF WRIT IS IN ORDER

Petitioner believes his corrected Briefs #3 and #4 were prepared literally

in conformance with Maryland Rule 8-503(a) (Appendix H) governing style and format. And that the Petitioner has in the past submitted similar briefs in other unrelated cases before the same Maryland Appellate Courts with no reservations or objections raised about them, i.e., see Extract of Kissi v. Muirkirk Industrial Condominium, Maryland Case # 1594, September 1994 Term (Appendix I). Petitioner prevailed in that case.

Petitioner, however, decries Maryland's extreme action in regards to Great American because the alleged defects aren't such that they harm the substance of his appeal which is the prejudicial error that arose from his claim for insurance reimbursement at the Circuit Court. And since the alleged defects neither harm or prejudice the

Respondent, Maryland has inadvertently abridged the Petitioner's 14th Amendment Rights in regards to the due process of the law (Appendix J). Despite Maryland's claim that Petitioner's Brief(s) wasn't acceptable, precedents, however, show that the same Maryland Appellate Courts have bent over backwards to accept defective or bad briefs in the interest of justice - some of which are:

1. Klein v. Dougherty,
   87 A.2d 821
2. Kasdon v. Westbury, Inc.,
   269 A.2d 625
3. Ebert v. Ritchery,
   458 A.2d 891
4. Willis v. Wills-Williams,
   316 Md 676 (1989)

Stated differently, Maryland should have said Petitioner's Briefs #3 and #4 were not comparable to the above similarly situated group or the Petitioner's Briefs were so bad they belong to a certain rejected class. Now, since Maryland

failed to state this class, Petitioner believes he is being treated arbitrarily different from others similarly situated. At least Maryland should state clearly its criteria or benchmark for comparing bad briefs in regards to which ones it will accept or reject. Petitioner doesn't object if Maryland absolutely refuses all bad briefs, but Maryland abuses its discretion if it accepts some bad briefs and rejects others arbitrarily.

CONCLUSION

Petitioner requests his petition for Writ of Certiorari may be granted or his original appeal re: prejudicial error arising from his insurance claim, should be reinstated in Maryland by overlooking the alleged defects that are deemed harmless in his Brief(s) #3 and #4. Petitioner reiterates that this petition

may be heard jointly with his other petition re: Legg Mason now pending before this Court, since both relate to the issue of defective Briefs but since Arkansas (Appendix K) ruling differs from Maryland on the same issue, it's the duty of this Court to resolve the conflicting opinions of two state courts of last resort.

Dated October 21st, 1996.

Respectfully Submitted,

D. Kissi

David Kissi, Pro Se

APPENDIX A
Maryland Court of Appeals Order Issued 7/24/96

DAVID KISSI	*In the
	*Court of Appeals
V.	*of Maryland
	*Petition Docket #68
	*Sept.Term 1996
GREAT AMERICAN INSURANCE COMPANIES	*(No. 1194, Sept. Term 1995, Court of Special Appeals)

ORDER

Upon consideration of the petition for a writ of certiorari and the supplements to the Court of Special Appeals, and the answers filed thereto in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition and supplements be and they are hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ ROBERT C. MURPHY
Chief Judge

Date: July 24, 1996

APPENDIX B
MARYLAND COURT OF SPECIAL APPEALS
DISMISSAL DATED 1/26/96

David Kissi
Appellant

In the
Court of Special
Appeals

V.

No. 1194

Great American
Insurance
Companies
Appellee

September Term, 1995

ORDER

On August 16, 1995, Appellant filed with this Court a brief that did not comply with the Maryland Rules. This Court issued an Order on October 27, 1995, providing that the appeal would be dismissed unless Appellant filed conforming briefs and record extracts on or before November 17, 1995. On November 8, 1995, Appellant filed a "corrected" brief and record extract that still did not comply with the Maryland Rules. On November 22, 1995, Appellee filed Motion to Dismiss, to which

APPENDIX B (con't)

Appellant filed an opposition on December 5, 1995. Also on December 5, 1995, this Court issued a second Order directing Appellant to correct his briefs and record extracts. The Order set out explicitly the corrections to be made. On December 22, 1995, Appellant filed a second "corrected" brief and record extract which still did not comply with the Maryland Rules. it is, therefore, this 26th day of January, 1996, by the Court of Special Appeals,

ORDERED that the captioned appeal is dismissed. It is further

ORDERED that Appellee's Motion to Dismiss is moot.

/s/Alan M. Wilner
Chief Judge

APPENDIX C

Mandate Court of Special Appeals
No. 1194, September Term, 1995

David, Kissi
v
Great American Insurance Companies

Judgment:

January 26, 1996: Order of this Court on its own initiative, dismissing the appeal.

Appeal dismissed. Maryland Rule 8-602(a) (8).

February 1, 1996: Motion for Reconsideration filed by appellant.

February 27, 1996: Motion for Reconsideration denied.

March 26, 1996: Mandate issued.

STATEMENT OF COSTS:

In Circuit Court: for MONTGOMERY COUNTY
118502-V

Record	50.00	
Stenographer Costs	89.60	
Total	139.60	

<u>In Court of Special Appeals:</u>

Filing Record on Appeal		50.00
Printing Brief for Appellant		32.40
Portion of Record Extract Appellant		565.20
	Total	647.60
Printing Brief for Appellee		39.60
	Total	39.60

Appendix C (con't)

STATE OF MARYLAND, Sct.

I do hereby certify that the foregoing is truly taken from the records and proceedings of the said Court of Special Appeals whereof, I have hereunto set my hand as Clerk and affixed the seal of the Court of Speclal Appeals, this twenty-sixth day of March A. D. 1996

/s/Leslie D. Gradet
Clerk of the Court of
Special Appeals

APPENDIX D

COURT OF SPECIAL APPEALS OF MARYLAND
ANNAPOLIS, MARYLAND
SEPTEMBER TERM, 1995

DAVID KISSI
APPELLANT

V.

Case 1194
SEPTEMBER TERM,
1995

GREAT AMERICAN
INSURANCE COMPANIES
APPELLEE

MOTION FOR RECONSIDERATION

DENIED.

/s/Alan M. Wilner
Judge

APPENDIX E

THE CIRCUIT COURT OF
MONTGOMERY COUNTY OPINION
DATED 5/3/95 - INITIAL RULING

DAVID KISSI
PLAINTIFF

V. CIVIL # 118502-V

GREAT AMERICAN
DEFENDANT

INITIAL RULING

Plaintiff's motion for judgment is denied.

/s/William Cave
Chief Judge
dated 5/3/95

APPENDIX F
ORDER DENYING REQUEST FOR
A NEW TRIAL DATED 6/8/95

IN THE CIRCUIT COURT FOR
MONTGOMERY COUNTY, MARYLAND

DAVID KISSI
t/a DK&R COMPANY
Plaintiff

V. Civil No. 118502

GREAT AMERICAN
INSURANCE COMPANIES
Defendant

ORDER

UPON CONSIDERATION of the Motion for New Trial filed herein by the Plaintiff and Defendant's Opposition thereto, it is thereupon this 8th day of June 1995, by the Circuit Court for Montgomery County, Maryland,

ORDERED, that Plaintiff's Motion for New Trial be and the same is hereby DENIED.

/s/William M. Cave
Judge, Circuit Court
Montgomery County, MD

APPENDIX G

MARYLAND Rule 8-602
DISMISSAL OF APPEALS BY COURT

(a) Grounds. - On motion or on its own initiative, the Court may dismiss an appeal for any of the following reasons:

(1) the appeal is not allowed by these rules or other law;

(2) the appeal was not properly taken pursuant to Rule 8-201;

(3) the notice of appeal was not filed with the lower court within the time prescribed by Rule 8-202;

(4) an information report was not filed as required by Rule 8-205;

(5) the record was not transmitted within the time prescribed by Rule 8-412, unless the court finds that the failure to transmit the record was caused by the act or omission of a judge, a clerk of court, the court stenographer, or the appellee;

(6) the contents of the record do not comply with Rule 8-413;

(7) a brief or record extract was not filed by the appellant within the time prescribed by Rule 8-502;

(8) the style, contents, size, format, legibility, or method of reproduction of a brief, appendix, or record extract does not comply with Rules 8-112, 8-501, 8-503, or 8-504;

(9) the proper person was not substituted for the appellant pursuant to Rule 8-401; or

(10) the case has become moot.

APPENDIX H
MARYLAND RULE
Rule 8-503
STYLE AND FORM OF BRIEFS

(a) **Numbering of Pages; Binding.** - The pages of a brief shall be consecutively numbered. The brief shall be securely bound along the left margin.

APPENDIX I
COVER EXTRACT RE:
DAVID KISSI v. MUIRKIRK CASE # 1594
SEPTEMBER TERM, 1994

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1594

September Term, 1994

DAVID KISSI

v.

MUIRKIRK INDUSTRIAL CENTER

CONDOMINIUM, INC.

et al.

Bishop,
Fischer,
Harrell,

JJ.

Per Curiam

Filed: May 18, 1995

CAE93-16755

APPENDIX J
AMENDMENT 14 TO THE U.S. CONSTITUTION

AMENDMENT XIV

(Ratified July 9, 1868)

SECTION i. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX K

KENNETH HILL, APPELLANT
v.
STATE OF ARKANSAS, APPELLEE

No. CACR92-12

COURT OF APPPEALS OF ARKANSAS

1993 Ark. App. LEXIS 64

PER CURIAM

On September 16,1992, we granted the State's motion to dismiss this appeal because the applicant failed to file to timely brief or seek permission to file a belated brief. On September 30, 1992, we denied a motion for reconsideration of that order filed by the appellant's attorney, James Massie. The appellant has now submitted a pro se motion to file a belated appeal which is the nature of a second motion for reconsideration. We grant the appellant's motion and reinstate his appeal.

On August 21, 1991, the appellant was found guilty of conspiracy to deliver cocaine and sentenced to thirty (30) years in the Arkansas Department of Correction. The petitioner was represented at trial by retained counsel, James P. Massie. Mr. Massie filed a timely notice of appeal and timely filed the record with this Court.

Subsequently, Mr. Massie filed a motion for extension of brief time on February 18, 1992, asserting work backlog; this motion was granted and Mr. Massie was allowed to March 14, 1992, to file his brief. However, on March 16, 1992, Mr. Massie filed a second motion for extension of time asserting that he had not been able to complete the brief due to his hospitalization, and requesting an additional thirty days to complete the brief.

A second extension was granted to April 13, 1992, no brief was tendered on that day, however, but instead Mr. Massie filed a third motion for extension of time requesting an additional thirty days to complete the brief on the grounds of impaired health and work restrictions.

Ultimately, Mr. Massie tendered the abstract and brief for the appellant on July 6, 1992. However the brief was tendered late and was submitted in the wrong format. Mr. Massie was informed that his brief as tendered was unacceptable; subsequently, his motion to file a belated brief was granted, with a corrected brief due on July 29, 1992. No corrected brief was filed, however, and the state moved to dismiss on the basis that the appellant has failed to prosecute the appeal, and the motion was granted.

The appellant, pro se, has filed the present motion for reconsideration, accompanied by a request to proceed in forma pauperis accompanied with the appropriate documents. We find that both requests have merit, and we therefore reinstate the appellant's appeal and appoint new counsel to represent him.

The Arkansas Supreme court has held that an appellant timely informs his attorney that he desires to appeal, the attorney is obligated to continue representation, unless permitted to withdraw by the proper court.

Furthermore in Gay v. State, 288 Ark. 589, 707 S.W.2d 320 (1986), our court held that the failure of counsel to perfect an appeal in a criminal case where an appeal was desired by the defendant constituted a denial of effective assistance of counsel and was

good cause for granting a motion for belated appeal. We think that Mr. Massie's failue to timely file a brief in the case at bar, which resulted in dismissal of the defendant's appeal, is likewise good cuase for granting this motion for reconsideration. Because the appellant has shown himself to be indigent, we grant his request for appointment of counsel, see Kennedy v. State, 31 Ark. App. 196, 789 S.W.2d 746 (1990), and we appoint the Honorable Teri L. Chambers, 721 West Second Street, Little Rock, Arkansas, 72201 to represent the appellant for the duration of the appeal.

The clerk of this court is directed to serve a copy of this per curiam on the Arkansas Supreme court committee on professional conduct.

Motion granted.

(2)

Supreme Court, U.S.
FILED
NOV 12 1996
CLERK

NO. 96-639

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1996

DAVID KISSI,

Petitioner

vs.

GREAT AMERICAN INSURANCE COMPANIES,

Respondent

On Petition for Writ of Certiorari
to the Maryland Court of Appeals

RESPONDENT'S BRIEF IN OPPOSITION

JOHN M. QUINN
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10 pp

LIST OF INTERESTED PARTIES

The Petitioner is David Kissi, t/a DK & R Company.

The Respondent is Great American Insurance Company. John M. Quinn is counsel of record for the Respondent.

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NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1996

DAVID KISSI,

Petitioner

vs.

GREAT AMERICAN INSURANCE COMPANIES,

Respondent

On Petition for Writ of Certiorari
to the Maryland Court of Appeals

RESPONDENTS' BRIEF IN OPPOSITION

Respondent requests that the Court deny the petition for writ of certiorari seeking review of decisions of the Maryland Courts of Appeal. Initially, it is hard for the Respondent to respond to some of the arguments presented by the Petitioner, as the Respondent has no idea to what the Petitioner is referring.

STATEMENT OF JURISDICTION

It is the contention of the Respondent that the Court does not have

jurisdiction to hear this matter as no Fourteenth (14th) Amendment Right, nor any other federal question, was implicated or infringed upon by the actions of the Court of Special Appeals or the Court of Appeals of Maryland.

STATEMENT OF THE CASE

Petitioner states in his statement of the case that the Maryland Court of Special Appeals dismissed his appeal "claiming that the Petitioner's Brief was trash." The Maryland Court of Special Appeals did dismiss his appeal, however there was never any allegation, claim, or finding that his Brief was "trash". Rather, the Court of Special Appeals dismissed the appeal because the Petitioner, despite repeated prompting, explicit instructions, and numerous opportunities, could not file a brief which was in conformity with the procedural rules of the Maryland Courts. The issues, and their question of their validity, in Petitioner's Appeal were never heard because Petitioner never filed a proper brief.

This case involved a suit by the Petitioner, David Kissi, acting pro se, against the Respondent, Great American Insurance Companies, in the Circuit Court for Montgomery County, Maryland. This case was a bench trial on May 3, 1995, in front of the Honorable William M. Cave of the Circuit Court for Montgomery County. After listening to all the evidence presented by the plaintiff, Judge Cave properly ruled that the Petitioner had not complied with the terms of his contract and directed a verdict in favor of the Respondent without reaching other issues raised by the Respondent.

The Petitioner timely noted an appeal to the Court of Special Appeals. The

Petitioner initially filed his brief, which Brief failed to conform to the Court rules regarding time, style, form, and content, prior to receipt of the Scheduling Order. The Court of Special Appeals then issued a Scheduling Order. The Court of Special Appeals on October 27, 1995, per Judge Wilner and acting on its own motion, ordered the Petitioner to file a proper brief and record extract in compliance with the Maryland Rules. The Court ordered specific compliance with Rule 8-501 of the Maryland Rules of Procedure, and the new brief and extract to be filed by November 17, 1995.

On November 8, 1995, Petitioner filed a new brief which was still not in compliance with the requirements of the Maryland Rules. Rather than dismissing the case at this point, which was requested by the Respondent in their Motion to Dismiss filed on December 5, 1995, the Court of Special Appeals issued a second Order, dated December 5, 1995, again on its own initiative, directing the Petitioner to file a proper brief by January 3, 1996. The Court even went to the step of stating explicitly the corrections which needed to be made.

The Petitioner filed another Brief with the Court on December 22, 1995, which, despite the Court's instruction, still did not comply with the Maryland Rules. When the Petitioner did not file a proper Brief with the Court by January 3, 1996, the Court dismissed his appeal on January 26, 1996. The Petitioner filed a Motion for Reconsideration on January 31, 1996, which was similarly denied by the Court on February 27, 1996.

Finally, the Petitioner filed a Petition for Writ of Certiorari to the Maryland Court of Appeals on the ground that the defects in his brief related more to style

than substance and that his due process rights had been abridged by the Maryland Court of Special Appeals in dismissing his brief. The Court of Appeals of Maryland denied the petition on the grounds that there was no showing that review by certiorari was desirable or in the public interest.

ARGUMENT IN OPPOSITION TO THE WRIT

I. ISSUES RAISED BY PETITIONER ARE NOT PROPER BASIS FOR A WRIT

It is the questionable power of a Court to decide an issue, not whether the Court decided the issue improperly, that gives rise to the power to issue a writ of certiorari to that Court. Vonoppenfeld v. State, 53 Md.App. 462, 454 A.2d 402 (1983). The Maryland Court of Special Appeals, per Rule 8-501, et seq. of the Maryland Rules of Procedure, has the explicit power to dismiss an appeal for failure to comply with the Court rules and requirements.

The Petitioner, despite explicit instruction from the Court and numerous extensions of time requirements, could not and did not file a proper brief on time. The Maryland Court of Special Appeals attempted to give the Petitioner every opportunity to file a proper Brief. In fact the Court, as did the trial court, to use Petitioner's own words, "bent over backwards" to help the Petitioner. In Orders dated October 27, 1995, and December 5, 1995, the Court gave the Petitioner his opportunities at the plate. When the Petitioner failed to file a proper brief by January 3, 1996, the Court issued Order three (dated January 26, 1996) and the Petitioner's appeal was dismissed.

If the Court had dismissed his appeal simply because it did not like the style with which he wrote or the grammar he used, then there exists a better argument that such action may infringe upon due process rights and be of consideration for a writ. This is not the case as the substance and the argument itself in the brief, however written, was never reached. The Petitioner did not follow the Rules of Procedure or continual Orders and instructions from the Court. The Rules of Procedure apply to all parties, even pro se parties, in all appearances before the Court, be it filing a motion or arguing on appeal. When the Petitioner did not follow these, it was within the Court's power to dismiss the appeal and the Court properly did so.

II. DUE PROCESS IS NOT IMPLICATED

The purpose of due process is to assure basic fairness of procedure. Moss v. Director, Patuxent Institute, 32 Md.App. 66, 359 A.2d 236, reversed 279 Md.561, 369 A.2d 1011 (1976). Implicit in the concept of fairness of procedure is application of the Court's Rules in the same manner to all parties. The Courts of Maryland did all they could to give Petitioner an opportunity to present his case and file a proper Brief. The decision of a Court to dismiss this case for failure to follow the Rules of the Court and the deadlines set by the Court, when they have been explicitly and repeatedly told to the Petitioner, does not implicate a Due Process right which is protected by either the Maryland or United States Constitution.

CONCLUSION

The action taken by the Appellate Courts of Maryland in dismissing the appeal for failure to follow the Rules of Procedure, and denying Petitioner's Petition for Writ of Certiorari, was in conformity with the Rules and the correct decision. There is no due process right implicated by the Maryland Court of Special Appeals' decision to dismiss for failure to follow the known rules of the Court. There is no reason to issue a writ in this case and the decision of the Maryland Courts of Appeal should not be disturbed. The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

JOHN M. QUINN
Counsel for Respondent
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Suite 109
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(301) 762-1696